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A.B. Appellant/Claimant v. LOCAL COMPANY, INC. Appellee/Employer	Case No.: 2012-DOES-00803

FINAL ORDER

I. INTRODUCTION

A. Summary

This is an appeal by Appellant/Claimant A.B. of a District of Columbia Department of Employment Services ("DOES") Claims Examiner's Determination disqualifying her from receiving unemployment compensation benefits. The appeal raises the issue whether Claimant voluntarily left her most recent work with Appellee/Employer Local Company, Inc., without good cause connected with the work, as specified in the District of Columbia Unemployment Compensation Act ("Act") and the applicable rules, D.C. Code, 2001 ed., § 51-110(a); 7 District of Columbia Municipal Regulations ("DCMR") 311.

Following a hearing and based on the evidence in the record, I find that while Employer established that Claimant left her employment voluntarily, Claimant established that she had good cause under the Act for leaving. Therefore, Claimant is qualified to receive unemployment compensation benefits.

B. Proceedings in this Case

This administrative court ("OAH") issued a Scheduling Order and Notice of In-Person Hearing on May 16, 2012, scheduling the hearing for May 31, 2012. Director and Chief Financial Officer B.C. appeared and testified on Employer's behalf. Claimant appeared and testified on her own behalf.

During the hearing, neither party offered any documents for admission into evidence. In determining the timeliness of Claimant's appeal, I considered the mailing certification on the Determination and this administrative court's file date stamp on the appeal, court records marked for identification as Exhibits 300 and 301, respectively.

II. JURISDICTION

Claimant's appeal request was timely, based on its filing date (May 15, 2012), and the mailing date of the Claims Examiner's Determination (May 10, 2012).[1] Jurisdiction is established.

[1] D.C. Code, 2001 ed., § 51-111(b); Title 1 DCMR (OAH Rules) 2812.3 and 2983.1; Court Exhibits 300 and 301.

III. FINDINGS OF FACT

Employer provides temporary staffing for local businesses. Claimant began work as a customer service representative on January 15, 2005, on one of Employer's contracts. At all relevant times, Claimant worked at a company that processes the red light citations from monitoring cameras. Claimant worked at a location in Northwest, D.C., an easy commute by public transportation from her home. Both Claimant's husband and son have disabilities that have required her to rush home to provide necessary care during medical emergencies.

On or about April 1, 2012, the monitoring company moved the worksite to Montgomery, County, Maryland. Claimant had let C.D., her supervisor, know, when she first learned that a move was under consideration, that she would likely not be able to move to the new location as she did not have a car available for commuting, and the site is not accessible by Metro. Claimant had been told that there would be carpools to get her to the new worksite. Claimant received only a couple of days' notice regarding the actual move date.

Claimant's work hours were 8:30 a.m. to 5:00 p.m. Claimant attempted the commute to the Montgomery County location for a few weeks; it entailed leaving home at around 4:30 a.m., taking a bus to the Metro, taking the Metro to the Silver Spring stop, and then trying to catch a bus that ran less than once an hour for a 40 minute ride to get even close to the new worksite, which was over a 15 minute walk from the bus stop. When Claimant got to the worksite, she inquired about carpools; she learned that none were available for her. Claimant had to leave work before 5:00 p.m. to catch the return bus, or she could not get home until well after 7:00 p.m. The commute thus added several hours to her work day; keeping Claimant away from home longer than she should be given her husband and son's conditions, and without any ability to rush home if the need arose.

In mid-April, Claimant called out for several days as she was ill, and then her son and husband became ill. C.D. contacted B.C., who spoke to Claimant. Before her call to Claimant, B.C. had inquired about carpools to the Montgomery County location and been told that there were some that might take Claimant. B.C. offered to send Claimant the paperwork necessary for Family and Medical Leave Act ("FMLA") leave; Claimant declined after learning about the uses for FMLA leave, since the medical situations with her husband and son are permanent disabilities.

Given the lengthy and cumbersome commute, Claimant realized that she would be unable to get home in case of an emergency with her husband or son. After discussing various options, Claimant told B.C. that she did not think she could come back to work at the new location. Employer had continuing work for Claimant, as she was a valuable employee. No disciplinary actions were pending against her.

IV. DISCUSSION AND CONCLUSIONS OF LAW

In the District of Columbia, generally any unemployed individual who meets certain statutory eligibility requirements is qualified to receive benefits. D.C. Code, 2001 ed., § 51-109. The law, however, creates disqualification exceptions to the general rule of eligibility. If an employee voluntarily leaves his or her most recent work without good cause connected with the work, as those terms are defined under applicable law and regulations, the employee is disqualified from receiving benefits. D.C. Code, 2001 ed., § 51-110(a).

The burden is upon the employer to establish an exception for an employee who would otherwise be eligible for unemployment insurance benefits under D.C. Code, 2001 ed., § 51-109. Therefore, the employer must show that the employee voluntarily left work. *See* Title 1 DCMR

(OAH Rule) 2822.2(d) (burden of production on party arguing an exception to a statutory requirement); *Badawi v. Hawk One Sec., Inc.*, 21 A.3d 607, 613-14 (D.C. 2011); *Morris v. U.S. EPA*, 975 A.2d 176, 181-82 (D.C. 2009) (employer seeking to prevent the payment of unemployment compensation bears the burden of proving that the employee engaged in disqualifying conduct).

An employee's leaving work is presumed to be involuntary. *Beynum v. Arch Training Ctr.*, 998 A.2d 316, 318 (D.C. 2010); *Berkley v. D.C. Transit, Inc.*, 950 A.2d 749, 759 (D.C. 2008). The presumption is overcome if the "claimant acknowledges that the leaving was voluntary or the employer presents evidence sufficient to support a finding . . . that the leaving was voluntary." 7 DCMR 311.3; *see Coalition for the Homeless v. D.C. Dep't of Emp't Servs.*, 653 A.2d 374, 376 (D.C. 1995). Thus, under current law, a leaving is "voluntary" if it is "voluntary in fact, within the ordinary meaning of the word 'voluntary.'" 7 DCMR 311.2; *see Cruz v. D.C. Dep't of Emp't Servs*., 633 A.2d 66, 69-70 (D.C. 1993). A departure is voluntary if it is based on the employee's will, not any action of the employer. *Lyons v. D.C. Dep't of Emp't Servs.*, 551 A.2d 1345, 1346 (D.C. 1988).

Once an employee seeking unemployment benefits acknowledges, or an employer establishes, that a leaving was voluntary, then the employee bears the burden of proving that the voluntary leaving arose from "good cause connected with the work." 7 DCMR 311.4; *Perkins v. D.C. Dep't of Emp't Servs.*, 482 A.2d 401, 403 (D.C. 1984). Pursuant to 7 DCMR 311.7, examples of reasons considered good cause connected with the work for voluntary leaving are racial or sexual discrimination or harassment; Employer's failing to pay for services; Employer's failing to provide a safe workplace; and *Employer's relocating and causing transportation*

problems "provided, that adequate, economical, and reasonably distanced transportation facilities are not available." 7 DCMR 311.7(f) (emphasis added).

The regulations also provide examples of circumstances which do not rise to the level of "good cause." Those examples include personal or domestic responsibilities, general dissatisfaction with the work, resignation to go to school or training, and a minor reduction in wages. 7 DCMR 311.6.

If the reason for quitting employment was to relocate to accompany a spouse or partner to a place from which it is impracticable to commute or to care for a family member who is ill or disabled, an employee is qualified to receive unemployment benefits. *See* D.C. Code 2001 ed., § 51-110(d) (as amended).

There is no dispute here that Claimant told B.C. that she would not be returning to work at a time when work was available. Thus, the evidence establishes that Claimant voluntarily quit her employment. The burden then shifts to Claimant to establish that she had good cause connected with the work for voluntary leaving.

Claimant and Employer's witness disagreed about the availability of a carpool for Claimant and when Claimant was informed about the existence of such a carpool. I do not find that dispute relevant in this case as I find the deciding factors to be Claimant's need to be reasonably available to her family due to their disabilities, and that the new work location lacked adequate and reasonably distanced transportation facilities. 7 DCMR 311.7(f). Thus, Claimant has established good cause for not returning to work.

Further, the Unemployment Compensation Reform Amendment Act of 2010 amended D.C. Code, 2001 ed., § 51-110(d) to add new paragraph five (caring for an ill family member) as

a non-disqualifying ground for leaving employment. Nothing in the amended Act defines the nature of the illness or how ill a family member must be to qualify. I find this provision to be applicable here, as I credit Claimant's testimony that she had to be able to get home reasonably rapidly if a situation arose with her husband or son; she could do so from the Northwest, D.C. location, but could not from Montgomery County.

In this case, since both leaving to help an ill family member is a non-disqualifying reason for not returning to her employment, and Claimant's inability to reach the new location by adequate and reasonably distanced transportation facilities is good cause to leave employment, the Determination that Claimant is disqualified from receiving unemployment compensation benefits is reversed. Claimant is qualified to receive benefits. D.C. Code, 2001 ed., §§ 51-110, 51-111(e); OAH Rule 2822.2(d).

V. ORDER

Based upon the foregoing findings of fact and conclusions of law and the entire record in this matter, it is, this 12th day of June 2012:

ORDERED, that the Determination of the Claims Examiner that Appellant/Claimant A.B. is disqualified from receiving unemployment compensation benefits is **REVERSED**, and it is further

ORDERED, that Appellant/Claimant A.B. is **QUALIFIED** to receive unemployment compensation benefits**,** and it is further

ORDERED, that the appeal rights of any person aggrieved by this Order are stated below.

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Beverly Sherman Nash
Administrative Law Judge